UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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401 KCBS CORP dba BREAD & BUTTER CO., Plaintiff, vs. MAXI CONSTRUCTION, THOMAS C. KIM, and JOHN DOES 1 THROUGH 5 Defendants.	17-CV-_______________ **Complaint with Jury Demand**

Plaintiff 401 KCBS Corporation, doing business as Bread & Butter Company, for its complaint against the above-named defendants, states upon knowledge except where stated upon information and belief:

THE PARTIES

1. At all relevant times, plaintiff Bread & Butter is a business entity having its domicile and principal place of business in New York, New York.

2. At all relevant times defendant Maxi Construction, Inc., is believed to be an

entity organized and existing under New Jersey law and maintains its principal place of business at 464 Hudson Terrace, Englewood Cliffs, New Jersey.

3. At all relevant times defendant Thomas C. Kim is believed to be the president and sole or primary owner of Maxi Construction, Inc., is believed to have a business address at 464 Hudson Terrace, Englewood Cliffs, New Jersey.

4. At all relevant times, defendants John Does 1 through 5 are individuals who are believed to be co-conspirators of the named defendants, who engaged in tortious acts and omissions against plaintiff, in concert and participation with the named defendants. These individuals' true identities are unknown to plaintiff currently and will be identified and joined during the course of discovery.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action under 28 U.S.C. § 1332(a); the parties are domiciled in different states and the amount in controversy exceeds $75,000.00 exclusive of costs and interest. Venue is proper under 28 U.S.C. § 1391(1), (2) because substantial events or omissions occurred in this district and defendants generally transact business in this district or within the State of New York.

BACKGROUND

6. Plaintiff owns and operates specialty eateries throughout Manhattan under the trade name "Bread & Butter."

7. In October 2016, plaintiff entered into a new lease for a new location for its "Bread & Butter" restaurant, at East 34th Street in Manhattan, and hired defendants Maxi Construction and its president Thomas C. Kim as plaintiff's general contractors. In this role, these defendants were to renovate the newly leased premises in a complete, turn-key operational state by early January 2017. These defendants undertook full responsibility for (a) all labor, (b) all materials, (c) all required demolition of the interior existing premises, and (d) all new fixtures and equipment, among other things.

8. On or about October 25, 2016, the parties entered into an agreement whereby the "full construction" would be rendered by defendants at a total cost of $265,000.00, on time, using high quality materials and workmanship, in a fully completed state.

9. Between October 25, 2016, and early January 2017, plaintiff paid approximately $240,000.00 on account with $25,000.00 remaining on account, based upon completion of renovation. In January 2017, however, defendant Thomas C. Kim, on behalf of both named defendants, committed anticipatory repudiation of defendants' contractual obligations by stating, in essence, that "I am unable to complete the job for the remaining $25,000.00" and requested "more money."

10. An inspection of the newly-leased store premises revealed substantial areas

of renovation that had been either incomplete or had been done so poorly as to require the renovation to be entirely or substantially re-done. Defendants also committed anticipatory repudiation of the timing of their completion; they now claimed that there was no way to complete the project by January 2017.

11. Plaintiff requested and demanded that defendants complete their job, as agreed previously, but defendants refused. Plaintiff demanded that defendants remove their tools from the premises.

12. Shortly after the parties parted ways, defendant Thomas C. Kim brought several of his associates to plaintiff's 34th Street job site, entered the store premises ostensibly to remove his tools. At that time and place, without authority to do so, defendant Thomas C. Kim and his associates stole, removed, converted and asserted illegal possession over moveable property items owned and belonging to the plaintiff. Defendants engaged in this actions of removal without authorization from plaintiff and in fact converted plaintiff's property as their own by asserting control over the property, removing it from the store premises, and claiming it as their property when, in fact, they knew they had stolen and converted the property.

13. As to the incomplete and defectively handled renovation project, plaintiff has been forced to hire a new general contractor and is attempting to complete the project properly. In this endeavor, plaintiff has already suffered financial loss caused

by (1) the renovation price differential of approximately $100,000.00 or more, (2) loss of income damages due to plaintiff's inability to open for business, in the sum to be proved at trial, and (3) the incursion of ongoing expenses and rent obligations from January 2017 forward.

14. After defendant was terminated for cause, defendant demanded "payment of the balance" in the sum of$25,000 and plaintiff declined. Plaintiff demanded defendant's termination of the "construction lien" placed against the property and defendant refused.

15. Due to defendant's refusal, plaintiff suffered further delays (1) in resuming the renovation; (2) in obtaining the landlord's assent; and (3) in actually undertaking the renovation job through a new contractor towards its completion.

CLAIMS FOR RELIEF

Count One – Breach of Agreement

16. The foregoing paragraphs are incorporated by reference.

17. By reason of the foregoing, defendants Maxi Construction and Thomas C. Kim breached their agreement. Plaintiff has suffered losses. Plaintiff is entitled to damages.

Count Two – Fraud in the Inducement

18. The foregoing paragraphs are incorporated by reference.

19. When the project renovation contract was being negotiated, defendants Maxi Construction and Thomas C. Kim represented and warranted that they were experienced in this kind of construction and renovation projects and that they were ready, willing and able to handle the job through turn-key completion by January 2017.

20. Despite their representations that they will finish the job by January 2017, defendants did not have sufficient manpower to complete the job even if the schedule had been set for March 2017. Upon information and belief, defendants Maxi Construction and its owner failed to disclose that they did not have sufficient labor and other resources to execute upon plaintiff's project properly; they intended to deceive plaintiff into believing that they were ready and able to complete the job even as they knew full well that they lacked sufficient manpower to do so. At the time they made these representations and inducements, the statements were false and defendants knew the statements were false and deceptive.

21. Plaintiff relied to its detriment; its reliance was reasonable under the circumstances, and plaintiff has been damaged. Defendants' acts and omissions were willful, malicious and wanton.

Count Three – Conversion of Plaintiff's Property

22. The foregoing paragraphs are incorporated by reference.

23. When defendants were permitted to remove their tools from the job site, defendants came with a premeditated plan to steal and convert plaintiff's property so as to interfere directly with plaintiff's ability to complete the renovation project and open for business. The theft of plaintiff's property was malicious, with a legal basis, and intended to harm plaintiff, and plaintiff has been harmed in two respects. First, plaintiff has been deprived of the possession, use and enjoyment of its property. Second plaintiff's grand opening timetable has been indefinitely extended and interfered by defendants' acts and omissions.

24. Plaintiff has been harmed by defendants' acts and omissions and is entitled to damages. Defendants' acts and omissions were willful, malicious and wanton.

Count Four – Breach of Fiduciary Duty

25. The foregoing paragraphs are incorporated by reference.

26. Defendants Maxi Construction and Thomas C. Kim, in their capacity as general contractor, in all dealing with subcontractors and third-parties, in connection with plaintiff's renovation project, were fiduciaries of plaintiff's property and other rights. As such, they owed the highest level of duty to be honest and forthright in their dealings. When they were terminated due to their own failure to meet deadlines and milestones and based upon quality of interim services, defendants breached their fiduciary duty by premeditating to interfere with plaintiff's business and property

rights as stated above, and executed their premeditated plans.

27. Defendants breached their duty and plaintiff has been damaged. Defendants' acts and omissions were willful, malicious and wanton.

Count Five – Tortious Interference with Contract

28. The foregoing paragraphs are incorporated by reference.

29. Defendants knew that plaintiff was under a contract with its landlord which required the payment of monthly rent for the store space as of a certain period. Defendants knew that plaintiff expected to generate revenue and profits from the opening of the business at the subject location, on time, so that its bills including rent can be paid. After defendants were terminated from the job, defendants intentionally interfered with these contractual relations between plaintiff and its landlord and plaintiff and its customers by interfering with a seamless continuity of renovation so that the losses from the delays could be recovered, if at all, or minimized.

30. Defendants interfered with plaintiff's contracts and plaintiff has suffered harms. Defendants' acts and omissions were willful, malicious and wanton.

Count Six – Tortious Interference with Relations

31. The foregoing paragraphs are incorporated by reference.

32. For the foregoing reasons, defendants interfered with plaintiff's relations and plaintiff suffered harms.

Count Seven – Prima Facie Tort

33. The foregoing paragraphs are incorporated by reference.

34. Defendants committed intentional infliction of harm to plaintiff by their acts and omissions. Defendants' conduct resulted in special damages, in the form of plaintiff's future revenue losses. Defendants had no excuse or justification for their theft of plaintiff's property and interference with the job site and continued renovation and grand opening and for their continued assertion of their "construction lien" since defendants, not plaintiff, had been terminated for cause. Defendants committed acts and omissions which would otherwise be lawful, and thereby committed prima facie tort. Plaintiff has been harmed. Defendants' acts and omissions were willful, malicious and wanton.

WHEREFORE, Plaintiff demands judgment against the defendants, jointly and severally, as follows:

A. compensatory damages;

B. punitive damages;

C. pre-judgment and post-judgment interest;

D. legal fees; other professional fees; costs; and

E. any other relief the Court deems just and proper under the circumstances.

JURY DEMAND

In accordance with Rule 38 of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury.

Dated: March 20, 2017

Respectfully,

/s/ Michael S. Kimm

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